IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 292 of 1990

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SATHVARA PARSHOTTAM SOMCHAND

Versus

HEIR OF NATHIBEN WD/O SATHWARA LILARAM SADARAM

Appearance:

MR VC DESAI for Petitioner

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 07/07/2000

ORAL JUDGEMENT

1. This is a revision under section 29(2) of the Bombay Rent Act, at the instance of the defendant-tenant, who was sued by the respondent-plaintiff-landlord for a decree of eviction under the provisions of the Bombay Rent Act, on the ground that he was in arrears of rent for more than six months and had omitted and neglected to pay the same inspite of the statutory notice.

2. The trial court, on a total appreciation of the evidentiary material on record, firstly came to the conclusion that the tenant was in arrears of rent for more than six months and that the rent was due from 1st January 1978. It may be noted at this stage that the trial court, without in the least considering the applicability of section 12(3)(a) of the Act, straightaway applied section 12(3)(b), and found that the tenant was ready and willing to pay the rent inasmuch as he had deposited the necessary amount during the course of the trial. The trial court, therefore, dismissed the suit of the landlord.

3. The landlord, therefore, preferred an appeal under section 29(1) of the Bombay Rent Act. The lower appellate court on a reappreciation of the entire evidence on record found, (while confirming the factual finding of the trial court), that the tenant was in arrears of rent with effect from 1st January 1978 (i.e. for a period of more than six months) on the date of the statutory notice, and although he had deposited the necessary amount during the course of the trial, he had not been regular in making the necessary deposits during the course of appeal, and had therefore lost the protection of section 12(3)(b) of the said Act.

3.1 The lower appellate court, therefore, passed a decree for eviction in favour of the landlord and against the tenant.

4. It must first be noted that both the courts below have made a fundamental error in their approach and perspective of both the landlord's case and the defence put up by the tenant. In any case, where a landlord sues the tenant for a decree of eviction on the ground of arrears of rent, the court is first required to consider the provisions of section 12(3)(a), and only if it arrives at a definite conclusion that section 12(3)(a) would not apply, can it then to proceed to consider the application of section 12(3)(b). The trial court has not even considered the application of section 12(3)(a), and has straightaway applied the provisions of section 12(3)(b). The lower appellate court has also been misled by the approach of the trial court, and although it has not recorded a finding either way as to the applicability of either provision, it is discernible from its treatment of the facts that it has straightaway applied section 12(3)(b), and considered the case of the tenant on facts, as to whether or not he was regular in making the deposits in court during the course of appeal.

5. In view of this fundamental error, both the courts adopted an indifferent and erroneous perspective of the matter.

6. On the facts of the case, the claim of the landlord has put up in the statutory notice and in the plaint is that the tenant was in arrears of rent from 15th January 1975 to 31st November 1980 i.e. for a period of more than six months. It is an admitted position that the tenant did not reply to the statutory notice, neither did he comply with the landlord's request to make payment of the necessary amount. When the landlord filed suit pursuant to the statutory notice, it was for the first time in the written statement that the defendant raised a contention as to standard rent. It is a well settled principle of law by this time, that a tenant raising a dispute as to standard rent for the first time in the written statement would not be able to take the case out of section 12(3)(a). In order to take the case out of the operation of section 12(3)(a), the dispute as to standard rent must be raised within 30 days of the receipt of the statutory notice, and such dispute must be raised either by giving a reply to the said statutory notice containing the dispute as to standard rent or by filing the necessary application in court under section 11 of the said Act. No other mode of raising the dispute would take the case out of the operation of section 12(3)(a).

7. Apart from the fact that both the courts below have recorded a finding of fact that the tenant was in arrears with effect from 1st January 1978 (i.e. for a period of more than six months), there is also the admission of the tenant in his written statement at Exh.17 that the rent is due from 15th May 1980. Even on the basis of this admission it can be seen that he was in arrears of rent for more than six months on the date of the statutory notice. Thus, it is obvious that the case would be covered by the provisions of section 12(3)(a) of the said Act, and once the admitted position is taken note of, to the effect that the tenant has failed to make payment to the landlord within 30 days of the statutory notice, the court has no option except to pass a decree for eviction under section 12(3)(a) of the Rent Act.

8. Thus, the lower appellate court, though passing a decree of eviction in favour of the landlord, has adopted a line of reasoning not entirely justified by law. However, for the reasons aforesaid, the decree of eviction passed by the lower appellate court is otherwise

justified and sustainable in law and is therefore required to be confirmed.

9. Learned counsel for the petitioner-tenant sought to contend that the finding recorded by the lower appellate court as to the quantum of rent due and payable is totally erroneous and is based on a total misappreciation of the evidence on record. I am not inclined to go deeper into this contention for the simple reason that the lower appellate court, although it has not dealt elaborately with this issue, has considered the evidentiary material on record, and has ultimately confirmed the factual finding of the trial court to the effect that the rent due and payable was with effect from 1st January 1978. Consequently the lower appellate court confirmed the decree of the trial court, so far as the quantification of the rent due and payable was concerned. This is entirely a question of fact, and so far as this aspect is concerned, there are concurrent findings of fact of both the courts below. I am, therefore, not inclined to interfere with the same.

10. In the premises aforesaid, I find that there is no substance in the present revision and the same is accordingly dismissed. Rule is discharged with no order as to costs. Interim relief stands vacated.

11. Learned counsel for the petitioner then seeks some reasonable time to vacate the premises. In view of the particular facts of the case, learned counsel for the respondent agrees that six months time to vacate the premises would be a reasonable period. Accordingly it is directed that the decree for possession shall not be executed for a period of six months from today, subject to the condition that the undertaking on usual terms is filed in this court within a period of two weeks from today. It is clarified that there shall not be any extension of time for the purpose of filing the undertaking, and if the same is not filed by the due date, the said relief against execution shall stand vacated ipso facto.

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